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A Balance of Forces

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Executive Summary

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A Balance of Forces

Executive Summary

Kenneth J. Matulia

September 1982

U.S. Department of Justice
National Institute of Justice

National Institute of Justice

This project was supported by Grant Number 79-NI-AX-0131, awarded to the International Association of Chiefs of Police by the National Institute of Justice, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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A Balance of Forces,

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FOREWORD

The authority to use deadly force is the most critical responsibility that will ever be placed on a police officer. No other single official has the right and the immediate means to lawfully take another's life. The responsibility of the police administrator, the jurisdiction, and the state, to control the police officer's authority is likewise awesome.

The consequences of a decision to use deadly force are not reversible after the fact; they are final. No court of competent jurisdiction or administrative tribunal can ever reverse the decision. In a like manner, a decision not to use deadly force can also mean finality. A hesitation or conscious decision on the part of the police officer could very well result in the death of the officer or another person the officer is sworn to safeguard. These are decisions unlike any other which are required by our society.

The police administrator must promulgate use of deadly force policy that will provide sufficient protection to his officers, provide officers with guidance, yet allow for just the correct level of discretion, provide all citizens with an assurance of safety, and provide all persons with the guarantees granted to them by the Constitution of the United States. The development of such a policy must be undertaken, but only after extensive research.

The purpose of this study is to provide the police administrator with sufficient research to identify the factors surrounding the use of deadly force in law enforcement, determine how these factors interrelate, and develop "model" policy guidelines and procedural techniques which could possibly lead to a reduction of citizen and police officer deaths. The study does not attempt to restrict police officers from protecting themselves and the lives of others. The study primarily addresses those justifiable homicides that may be prevented through the adoption of new policy, training, equipment, and techniques.

It is my sincere hope that this report will in some way contribute to our abilities to protect our police officers and the citizens they serve.

Norman Darwick
Executive Director
International Association of
Chiefs of Police

ACKNOWLEDGEMENTS

This report is the culmination of many hours of research by the International Association of Chiefs of Police. While only one name appears on the title page, many have contributed to its completion.

J. Thomas McEwen of Research Management Associates, Inc., served as the technical consultant to the project. He conducted the Interrupted Time Series Analysis, keypunched, programmed, and computerized the survey instrument and provided expert review of Chapter IV. His consultation throughout the project kept me on a correct empirical path to completion.

I wish to extend a heartfelt thanks to the 53 police chiefs and their staffs for responding to our arduous survey instrument. Their responses served as the basis for this report. The massive amounts of statistical data which they furnished should serve as source material for years to come. I wish to express sincere gratitude for their openness in supplying us with some of the most critical police policy they will ever have to promulgate. Their responsiveness is only a small indication of their dedication to the professional improvement of the police service.

I wish to thank FBI Director William H. Webster for permitting me access to the Uniform Crime Records. Paul Zolbe, Chief, Uniform Crime Reporting Program, and his assistant, Ken Candell, were most helpful and patient with me throughout the project. Without their untiring patience and diligence in supplying me with statistical data and answering my telephone inquiries, this project would not have been completed.

I am most grateful to Shirley Melnicoe, Project Monitor, National Institute of Justice, and to members of the National Advisory Board for the Police Use of Deadly Force Projects. Their guidance was felt throughout the project but, most importantly, their review of the draft of the report was critical to the presentation of this final report. William Geller and James Fyfe lent their expertise to a final review of the report.

Patricia (Tish) Ridgeway and Norma Viets are to be congratulated for wading through drafts of endless tables and for typing of the draft and final report. Marita Menaker provided the necessary touch of class in editorial review.

Finally, I wish to extend a special thank you to James Sterling, Director, Professional Development Division, International Association of Chiefs of Police. As Division Director, he provided considerable guidance and served as a sounding board for ideas; but I am most appreciative of the freedom which he permitted me to develop the research, work through ideas, and produce this final report.

Kenneth J. Matulia

CONTENTS

	Page
FOREWORD	iii
ACKNOWLEDGEMENT	v
INTRODUCTION	1
SECTION 1, Study Methodology	5
SECTION 2, Legal Review	9
SECTION 3, Justifiable Homicide Counts	15
SECTION 4, Crime Levels and Justifiable Homicide by Police	21
SECTION 5, Race and Justifiable Homicide by the Police	23
SECTION 6, Departmental Practices and Justifiable Homicide by the Police	25
SECTION 7, Departmental Policy and Justifiable Homicide by the Police	27
SECTION 8, Model Deadly Force Policy Guidelines	31

TABLES

TABLE 1	Rate of Justifiable Homicide by the Police by Category of State Law, 1975-1979	12
TABLE 2	Justifiable Homicide by Police, 1970-1979	17
TABLE 3	Rate of Justifiable Homicide by the Police to 100 Police Officers, 1975-1979	18
TABLE 4	Justifiable Homicide by Police 1970-1979 - 57 U.S. Cities	22
TABLE 5	Use of Deadly Force Policy to Make Arrests	28
TABLE 6	Use of Deadly Force Policy to Recapture Escapee	29

INTRODUCTION

This Executive Summary provides an overview of A Balance of Forces, a report on an 18-month study of the police use of deadly force. The report has a simple thesis—that the frequency of "justifiable homicide"[1] by police officers is related to the level of crime and violence in a community. No implication is made here that abuse or unjustified violence by police officers should be accepted as part of a community's cycle of violence. Further, no suggestion is made that "justifiable" homicides cannot be controlled. Indeed, the full report and this Summary contain model policy guidelines which were developed with one objective in mind, to assist police executives to exert maximum control over the use of deadly force by officers in an effort to reduce the rate of justifiable homicide.

A Balance of Forces is a research report of the circumstances surrounding "justifiable homicides" by the police in 57 United States cities[2] during the period 1970-79. The study examines a most controversial and complex issue—the use of deadly force by the police. At the center of this complex issue stands the individual police officer who in his actions is expected to balance concepts that can conflict in practice, including: the rights of the police to protect their own lives; their duty to protect the lives of third parties; the legislated responsibility to suppress community violence, to reduce crime, and to provide for the security of all people by means which are both reasonable and necessary. These rights, duties, and powers must be balanced with the constitutional right of individual liberty; the right of every citizen to be protected by the police; and the constitutional right of every citizen to be presumed innocent of crime until proven otherwise by a jury of peers in a court of competent jurisdiction. Additional factors that serve to obscure a simple answer to the questions surrounding the deadly force issue include differing judicial rulings and legal opinions; community group pressures; executive policies and preferences; and individual officer perceptions, fears, education, training, and value systems.

While the authority to use deadly force is among the most burdensome responsibilities placed on individual officers, the obligation of the police administrator, the jurisdiction, and the state to control the police officer's authority to use deadly force is equally important. The police administrator must promulgate use of deadly force policy and procedure that will provide officers sufficient latitude for self-protection and adequate guidance for the exercise of a realistic level of discretion. Further, the chief administrator must provide all citizens with an assurance of safety

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[1] "Justifiable homicide" has been defined by the FBI as the "killing of a felon by a peace officer in the line of duty," FBI, Uniform Crime Reporting Handbook (Washington, D.C.: U.S. Department of Justice, 1979).

[2] On the premise that a significant number of law enforcement-related homicides occur within the urban areas, this study focuses on the 57 police agencies serving urban areas having a population of 250,000 or more.

within the framework of the guarantees granted to them by the Constitution of the United States. Policy and procedural statements which meet these criteria must be developed by the administrator but only after extensive research and thoughtful deliberations.

A central purpose of this study was to provide police administrators, lawmakers, and community groups with sufficient research data to:

- Identify factors of law enforcement that underlie and determine the frequency of use of deadly force by police officers.
- Gain an understanding of the interrelationships of these factors and their causal role in homicides by police officers.
- Develop "model" policies and procedures designed to reduce police homicides while preserving the officer's ability to fulfill his law enforcement duties and to protect himself from death or personal harm.

Widespread attention given to the issue of the police use of deadly force is not a recent phenomenon. The issue has existed since the beginnings of policing in this country, when New York City police officers began arming themselves in 1858. In the early years, the issue was of local concern, heightened from time to time by specific incidents. The issue attracted national attention in 1940 when the International Association of Chiefs of Police addressed the subject at their annual conference.[3] In recent years, the issue has not suffered from under-exposure in the literature, legal reviews, government studies, and other writings. Research on issues related to the use of deadly force by the police has continued to the present. For example, a valuable research report was released and reviewed just as this publication was being prepared for final review.[4]

The problem with the existing literature has been a lack of continuity and comparability, a lack of standard definition, a multitude of perceived problems, and an absence of sound baseline data. Regardless of the inadequacies in previous research, much of the existing body of knowledge has been of tremendous assistance throughout the project, especially so during the initial stages of conceptualization. The literature reviews provided an understanding of differences in methodology, data sources, definition, and perceived conclusions. Obviously, the conclusions were not always comparable because of the methodological and data source differences.

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[3]IACP, The Police Yearbook (Gaithersburg, Md.: International Association of Chiefs of Police, 1940). "The use of firearms by the police is without question a very serious matter and should be resorted to only in cases of grave emergency. To shoot is without doubt one of the most serious decisions a police officer can be called upon to make, and, once made, the officer must be prepared to stand by his decision."

[4]William A. Geller and Kevin J. Karales, Split Second Decisions: Shootings of and by Chicago Police (Chicago: Chicago Law Enforcement Study Group, June 1981).

One previous research effort concluded that: "Police homicide is substantially under-reported, possibly by around 50 percent."[5] This conclusion could only be considered as correct because of the selection of a specific data source, the National Health statistics. On another point, the term "police," as simple as it may sound, is very complex in its definition from city to city. For example, in Chicago, a ratio of police to population is more inclusive than the same statement of ratio in New York because in New York there are three major "police agencies": New York City Police Department, New York City Transit Authority Police, and New York City Housing Authority Police. Therefore, when one reads statistics of police ratio to population, crime, and a number of other categories, one must be cognizant of these differences. Beyond this simple difference in two of our largest cities, one must also be aware of the presence of other "police" agencies such as federal law enforcement agencies, private security "police," prison guards, university "police," Indian Nation "police," transit "police," port authority "police," airport "police," railroad "police," states attorney's "police," and park "police."

Although the main issue addressed in the literature is the use of deadly force by public law enforcement agencies, the treatment of that issue has varied with the research approach and conceptual biases of the author(s).[6] Fyfe studied all shots fired (intentional, unintentional, accidental, warnings, directed at animals or persons); Geller and Karales looked only at shots which killed or injured a civilian or police officer; Margarita concerned herself with line-of-duty killings of police; and Robin looked only at homicides. Others addressed their projects differently because of developed hypotheses, financial limitations, manpower limitations, and inability to obtain source data. A Balance of Forces, and consequently this Executive Summary, consider only homicides committed by municipal police officers in the 57 largest cities in the United States.

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[5]Lawrence Sherman and Robert Langworthy, "Measuring Homicide by Police Officers," Journal of Criminal Law and Criminology, 546 (1979). "It is the police that have provided the largest figures on the number of citizens killed by police. The source of the under-counting is not the police, but rather the local medico-legal officers and the national system of vital statistics."

[6]James Fyfe, Shots Fired: An Examination of New York City Police Firearms Discharges (Ann Arbor, Mich.: University Microfilms International, 1978).
Geller and Karales, Split Second Decisions: Shootings of and by Chicago Police.
Catherine Milton, Jeanne Wahl Halleck, James Lardner, Gary L. Abrecht, Police Use of Deadly Force (Washington, D.C.: The Police Foundation, 1977).
Sherman and Langworthy, "Measuring Homicide by Police Officers."
Gerald D. Robin, "Justifiable Homicide by Police Officers," Journal of Criminal Law, Criminology and Police Science, (May/June 1963).
Board of Police Commissioners of Los Angeles, The Report of the Board of Police Commissioners Concerning the Shooting of Eulia Love and the Use of Deadly Force, Parts I-IV (Los Angeles: Board of Police Commissioners, 1979-80).
Mona Margarita, "Killing the Police: Myths and Motives," 452 Annals of American Academy of Political and Social Science, 63 (November 1980).

The report concludes that each police administrator must promulgate or update use of deadly force directives. The administrator should use the collective research findings of this and other pertinent publications as a framework for development of such a directive. Critical deadly force policy decisions are not easily made, nor is the ultimate on-street decision to shoot an easy one for the police officer. The consequences of either decision are far-reaching. It is, however, far better that most of the decision considerations be critically analyzed from within the calm, rational atmosphere of the administrator's office, rather than from the more explosive, often irrational, and unpredictable "office" (the street) of the police officer.

This report and especially the "model" guidelines should not be viewed as a final product to resolving the complex issues associated with police use of deadly force. The report, more appropriately, should be seen as a beginning or a point of departure. Police administrators and researchers should grasp these fragments of knowledge regarding deadly force by the police, discuss the findings, refine and expand the research, and continue to look for that magic answer that may have escaped from our findings.

SECTION 1

STUDY METHODOLOGY

As stated in the Introduction, the purpose of the study was to identify factors related to deadly force incidents and develop model policy guidelines aimed at reducing homicide by the police. The study does not attempt to restrict police officers from protecting themselves or the lives of other citizens.

The study concentrates on incidents of homicide by on- and off-duty police officers in 57 agencies serving communities with populations of 250,000 or more.[1] Within this category of police departments, justifiable homicide rates were studied to test hypotheses about variables that possibly affect those rates.[2]

The research work proceeded as follows:

National Advisory Board. A National Advisory Board was convened by the U.S. Department of Justice, National Institute of Justice. The Board members included:

Julius Debro
Department of Criminal Justice
Atlanta University
Atlanta, Georgia

Shirley Melnicoe
Project Monitor
National Institute of Justice

Joseph S. Dominelli
Chief of Police
Rotterdam, New York

Joseph McNamara
Chief of Police
San Jose, California

Larry Sherman, Ph.D.
The Police Foundation
Washington, D.C.

Albert Reiss, Ph.D.
Sociology Department
Yale University
New Haven, Connecticut

Armando Morales, Ph.D.
Department of Psychiatry
University of California
Los Angeles, California

The Board met initially to develop a strategy for coordinating four use of deadly force projects which were simultaneously funded and monitored by the National Institute of Justice.[3]

The Board was instrumental in laying out the study parameters so that duplication of effort by the four groups would be reduced. The Board also helped to identify the existing bodies of literature from which to begin a review.

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[1] See Table 1.

[2] Ibid.

[3] a. International Association of Chiefs of Police
b. National Urban League
c. National Council of La Raza
d. University of California, Irvine

Review of the Literature. A literature review was conducted in an effort to learn as much as was possible about the subject within the time limitations of the project. The review included newspaper articles, magazine accounts, legal publications, various state laws, government and private studies, doctoral dissertations, reports of meetings, conferences and hearings, books, training bulletins and numerous police policies. This review, along with the personal experience of the author, formed the basis for developing hypotheses.

Review of Law. A review of law and legal literature was conducted relative to the issue of police use of deadly force. The 50 state laws are briefed in the report appendix. The review identified three legal categories that apply to police use of deadly force: common law, modified common law, and Model Penal Code. Many states and cities had unique combinations of these three categories. The 57 cities under study were then grouped within these three categories of law to determine justifiable homicide rates for each group.

Development of Hypotheses. Based on the literature review, approximately one hundred hypotheses were initially developed to test for the existence of a relationship to the police use of deadly force. With the assistance of the Advisory Board, the number was reduced to forty hypotheses that formed the basis for development of a survey instrument.

The Survey. A survey instrument was drafted and sent to all members of the Advisory Board as well as several police chiefs throughout the country. These individuals were requested to review the document for its practicality, comprehensiveness, and utility in obtaining the necessary data from participating study agencies. The final survey instrument, a 71 multi-part question document, was mailed to police executives who command the 57 largest municipal police agencies in the country. The responses to this survey provided one of the major sources of statistical data which were later used to test the hypotheses.

FBI Uniform Crime Records Data. The Federal Bureau of Investigation Uniform Crime Records Section was asked to furnish unpublished data from the period 1970-1979.[4] The data included justifiable homicide by the police, justifiable homicide by civilians, and arrests by age, sex, and race. Other crime data were extracted directly from FBI publications[5] and served as a major source of statistical data for testing the hypotheses. The FBI justifiable homicide data were closely compared to the justifiable homicide data collected in the 57-city survey.

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[4]FBI, Crime in the United States 1970-1979 (Washington, D.C.: U.S. Department of Justice, 1971-1980), and FBI, Law Enforcement Officers Killed 1970-1979 (Washington, D.C.: U.S. Department of Justice, 1971-1980).

[5]Ibid.

Deadly Force Policy Content Analysis. Selected national deadly force olicy recommendations were reviewed to gain an understanding of different rganizational views toward the subject. Such reviews included policy, esolutions, or recommendations offered by: (1) the American Law Institute, 2) the Federal Bureau of Investigation, (3) the International Association f Chiefs of Police, (4) the President's Commission on Law Enforcement and dministration of Justice, (5) the Wisconsin Institute of Government Affairs, 6) the American Bar Association, (7) the National Organization of Black Law nforcement Executives, (8) the United Nations, and (9) the American Civil iberties Union. A more detailed study was made of the nation's state police nd state patrol organizations. Beyond this, the policies of the few re-ponding federal law enforcement agencies were examined.[6]

Fifty-seven municipal police agencies were requested to forward any olicy, procedure, general orders, tactical announcements, or training ulletins related to the issue of police use of deadly force.[7] A policy ontent analysis instrument was developed and each policy document (federal, tate, or municipal) was evaluated in terms of its content using the content nalysis form.[8] The results of these analyses provided a major source of ata for hypotheses testing and a primary source of reference for developing model" policy.

Test of Hypotheses. Data from the survey, FBI, and policy content nalyses were computerized. The computer was programed to conduct several tatistical tests (t-test, time series, correlation) of the 40 hypotheses. hese hypotheses were tested against more than 350 independent departmental, rime, and community variables.

Development of Model Policy. The research project was concluded with he development of a set of model policy guidelines based on the empirical nd analytical findings of this and other research works.

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[6]Federal Law Enforcement Policy - Only four federal agencies responded to ur survey request for use of deadly force policy. For the most part, federal olicy and procedure was unrelated to the municipal police function. The pol-cy is more general in its treatment of the issues than is municipal policy.

[7]State Law Enforcement Policy - Thirty-eight (77.6 percent) of the na-ion's 49 state law enforcement organizations (state police or state highway atrol) responded to our survey of deadly force policy. Hawaii does not have state law enforcement agency. Unlike the municipal police organizations, tate agencies appear less inclined to promulgate use of deadly force policy. hirty-two (82.1 percent) state agencies have written departmental policy and ix (15.4 percent) do not. The six without departmental written policy are tated to be guided explicitly by the state statutes on the use of force.

The cities of Atlanta, El Paso, Pittsburgh and Milwaukee did not submit olicy.

[8]Klas Krippendorff, Content Analysis, An Introduction to Its Methodology, ol. 5, The Sage Commtext Series (Beverly Hills, California: Sage, 1980), . 169.

SECTION 2

LEGAL REVIEW

With input from citizens, state legislatures, and the courts, police executives have adopted a myriad of policy guidelines within which the taking of a human life is acceptable. Grand juries have generally concluded that shootings by police officers are "justifiable." Disregarding the individual police department rules which generally place a more restrictive standard of conduct than permitted by law, there are basically three standards of conduct controlling police use of deadly force in the 50 states. The three categories are:

1. Common Law
2. Modified Common Law
3. Model Penal Code

Common Law. The 23 common law states have generally adopted deadly force statutes with wording similar to the following:

- The officer must have probable cause to believe that a felony has been committed and that the person to be arrested committed it, and
- The arresting officer must give the defendant notice of his intention to arrest, and
- The defendant either flees or forcibly resists, and
- Whatever force the officer uses must be necessary to effect the arrest.

In the 23 states that have adopted the common law rule, what constitutes a "felon" is not specifically defined. Courts have reverted to the original historical definition when all felonies were punishable by death. Many crimes which are today not punishable by death (larceny, burglary, embezzlement, check fraud, auto theft, and others) nevertheless remain classified as felonies.

Modified Common Law. Twelve states have, through statute, modified the common law approach to the deadly force issue. Basically, those states have disallowed the any felony rule and replaced it with the following style of wording:

Deadly force may be used to effect the arrest of a person:

- Who attempts to escape from justice by use of a deadly weapon; OR
- Who otherwise indicates that he will endanger human life

or inflict great bodily harm unless arrested without delay; OR

- Who has committed a "dangerous or atrocious" felony. (dangerous or atrocious being generally defined to include murder, arson, mayhem, burglary, aggravated assault, rape, kidnap, extortion and robbery.)

Model Penal Code. Seven states have implemented various modified forms of the Model Penal Code[1] as their standard for use of deadly force. This model code specifies:

1. Use of deadly force to effect an arrest when:

   - The arrest must be for a felony; AND
   - The person effecting the arrest must be authorized to act as a peace officer or is assisting a person whom he believes to be authorized to act as a peace officer;

     AND

   - The officer believes that the force employed creates no substantial risk of injury to innocent persons; AND
   - The officer believes the crime for which the arrest is made involved conduct including the use or threatened use of deadly force; OR
   - The officer believes there is a substantial risk that the person to be arrested will cause death or serious bodily harm if his apprehension is delayed.

2. Use of deadly force to prevent escape from custody:

   - A guard or other person authorized to act as a peace officer is justified in using deadly force, which he believes to be immediately necessary to prevent the escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of a crime.

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[1]The American Law Institute, Model Penal Code, Proposed Official Draft, § 3.07 (1962).

3. Use of deadly force to prevent the commission of a crime:

   - The officer believes that there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily harm to another unless the commission or the consummation of the crime is prevented and that the use of such force presents no substantial risk or injury to innocent persons; OR

   - The officer believes that the use of such force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned in any particular manner that the law may require that such force will be used if they do not obey.

No Statute Law. Eight states and the District of Columbia do not have specific statutory law regarding police use of deadly force. These states have relied on the courts to establish when and to what extent force may be used by police officers.

It is commonly hypothesized that restrictive state laws regarding deadly force should result in a reduction in the police justifiable homicide rate.[2] In an attempt to test this hypothesis, the study cities were grouped by the three (Common Law, Modified Common Law, Model Penal Code) categories of state law (Table 1). The results of this comparison show the common law cities with the highest mean (.33) JHR followed by the Model Penal Code cities (mean .25) and the Modified Common Law cities (mean .22).

In reviewing these comparisons, the reader should recognize that not all cities follow the exact guidelines established by law. For example, Sacramento, in the common law state of California, has a more restrictive deadly force policy than that required by state law. It is interesting to note that the common law state of California includes the city (Sacramento) which experiences the lowest (.04) justifiable homicide rate and also a city (Oakland) which experiences one of the highest rates (.67).

Even though most states have enacted a use of deadly force statute, it was found that most police agencies have a more restrictive firearm policy than that required by law. This is somewhat interesting in light of the fact that court opinion as to the use of such restrictions has been mixed. For example, a number of courts have indicated that a more restrictive policy

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[2]Gerald F. Uelman, "Varieties of Public Policy: A Study of Police Policy Regarding the Use of Deadly Force in Los Angeles County," Loyola of Los Angeles Law Review, Vol. 6 (1973).

TABLE 1

RATE OF
JUSTIFIABLE HOMICIDE BY THE POLICE
BY CATEGORY OF STATE LAW
1975-1979

Cities in Common Law States		Cities in Modified Common Law States		Cities in Model Penal Code States	
City	JHR	City	JHR	City	JHR
Albuquerque	.21	Buffalo	.09	Austin	.09
Denver	.16	Chicago	.17	Charlotte	.10
Indianapolis	.40	Newark	.08	Dallas	.35
Jacksonville	.65	New Orleans	.77	El Paso	.25
Kansas City	.35	New York	.14	Ft. Worth	.18
Long Beach	.64	Philadelphia	.21	Honolulu	.05
Los Angeles	.35	Portland	.12	Houston	.58
Memphis	.31	Rochester	.19	Louisville	.27
Miami	.25			Omaha	.25
Minneapolis	.18			San Antonio	.35
Nashville	.41	Mean	.22		
Oakland	.67			Mean	.25
Oklahoma City	.49				
Phoenix	.22				
Sacramento	.04				
St. Louis	.45				
St. Paul	.07				
San Diego	.33				
San Francisco	.16				
San Jose	.24				
Seattle	.22				
Tampa	.30				
Tucson	.42				
Tulsa	.31				
Wichita	.36				
Mean	.33				

could be used as the standard of conduct in a civil case against a police officer,[3] while several other courts have held that a more restrictive policy cannot be used against an officer.[4]

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[3]Dillenbeck v. City of Los Angeles, 72 Cal. Rptr. 321, 446 P.2d 129 (1969).

DeLong v. City and County of Denver, 530 P.2d 1308 (Colo. App. 1947).

Grudt v. City of Los Angeles, 2 Cal. 3d, 375, 86 Cal. Rptr. 465, 468 P.2d 825 (1970).

Vallas v. City of Chula Vista, 128 Cal. Rptr. 469 (App. 1976).

Peterson v. City of Long Beach, 594 P.2d 477 (Cal. Sup. Ct. 1979).

[4]City of St. Petersburg v. Reed, 330 So.2d 256 (Dist. Ct. App. 1976).

Chastain v. Civil Service Board of Orlando, 327 So.2d 230 (Dist. Ct. App. 1976).

SECTION 3

JUSTIFIABLE HOMICIDE COUNTS

Although statistics concerning justifiable homicide by the police have been collected for a number of years, these figures have not been widely disseminated. Furthermore, the various sources have used significantly different methods of collection. It is important to note these variations.

National Center for Health Statistics. The National Center for Health Statistics (NCHS) collects and publishes "Vital Statistics of the United States." These records include data on justifiable homicides by the police. The records are tallied from "Standard Death Certificates" completed by local coroners. This system is suspected to be fraught with serious deficiencies including: poor quality of the medical diagnoses; lack of coroner's awareness, support for, and legal obligation to comply with the system's request for information; vagueness of the instructions for completing the Standard Death Certificate; close relationship between the local police and the medico-legal office; diversity of procedures used among different coroners; mechanical and conceptual errors in the transmission and coding of the data.[1]

Deaths recorded by NCHS are recorded by county in which the death occurred, which is not necessarily the same jurisdiction where the homicide occurred. The NCHS has compiled annual counts since 1949. A recent analysis of NCHS counts indicates rather consistent under-reporting by about 50 percent.[2]

Uniform Crime Records. The FBI Uniform Crime Records Section has been collecting voluntary submissions of homicide by the police from police departments throughout the country since 1940. The fact that these statistics are voluntarily submitted creates some doubt about their accuracy. However, for the past several years, an increasing number of states have mandated such submissions and then reported same to the FBI collection source. These records are tallied by jurisdiction in which the homicide occurred regardless of the officer's agency of employment. For example, a county sheriff, state police officer, or federal law enforcement officer shoots a suspect in a jurisdiction other than that in which he is employed; the death is statistically attributed to the jurisdiction and police agency where the death occurred and not to the officer's employment jurisdiction.

Police Internal Files. This study includes a count of justifiable homicides by the police in 57 U.S. cities. Thus, when the officer was out of his employing jurisdiction (off-duty, in pursuit, or for any other reason) when he

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[1]Lawrence Sherman and Robert Longworthy, "Measuring Homicide by Police Officers," Journal of Criminal Law and Criminology, 546 (1979).

[2]Ibid.

used deadly force, the justifiable homicide was attributed to the officer's employer (the city).

Homicide Counts for this Study. For this study, the FBI, U.C.R. Section furnished unpublished justifiable homicide tallies for each of the 57 study cities. In addition, IACP made a direct request to each city for justifiable homicide data. The two tallies (IACP and FBI) were cross-checked for discrepancies and every effort was made to resolve any differences.

Table 2 represents a count of justifiable homicides that combines the best available data.

The report presents six methods of calculating justifiable homicide rates by the police for each of the 54 cities.[3] The six rate categories were computed using the ratio of justifiable homicide by the police to:

- the number of police officers,
- the number of justifiable homicides by civilians,
- the number of total homicides in the community,
- reported robbery,
- reported violent crime, and
- the communities' populations.

These rates were evaluated from a number of perspectives. The six rates were combined into a single justifiable homicide index. The six individual rates were compared against one another, and, despite minor changes in rank order of the cities, the six rates were found to be correlated. Each of the six rates was tested against several of the study hypotheses, and differences of the results were insignificant.

Each of these justifiable homicide rates and the index has limitations. Without ignoring these limitations, the most effective utilization of the rates was sought.

As a result of the preliminary tests using the six rates, the correlations of the six categories, and the need to keep the size of the report to a readable volume, a choice was made to present only the statistical results of hypotheses testing using a single rate, Justifiable Homicide by Police - TO - Number of Police Officers (Table 3). Therefore, unless otherwise specifically noted, all future reference to a justifiable homicide rate (JHR) will indicate

$$\frac{\text{number of justifiable homicides by the police}}{\text{number of police officers}} \times 100 = \text{JHR}$$

[3]Three cities did not respond with statistical data.

TABLE 2

JUSTIFIABLE HOMICIDE BY POLICE
1970-1979

Agency	1970*	1971*	1972*	1973*	1974*	1975	1976	1977	1978	1979	Five-Year (1975-79) Average
Akron	1	1	3	4	2	0	0	2	0	1	0.6
Albuquerque	1	0	2	1	2	1	2	0	2	0	1.0
Atlanta	7	13	8	17	11	6	4	2	4	3	3.8
Austin	0	1	0	1	2	0	1	0	1	0	0.4
Baltimore	9	18	12	7	11	16	7	6	9	5	8.6
Birmingham	3	4	3	4	0	8	7	3	3	4	5.0
Boston	0	1	5	0	0	5	0	0	1	1	1.4
Buffalo	4	4	0	1	2	0	2	1	0	2	1.0
Charlotte	1	0	0	2	1	1	1	0	0	1	0.6
Chicago	42	42	29	28	35	34	15	31	15	19	22.8
Cincinnati	2	2	1	2	2	2	0	2	2	4	2.0
Cleveland	6	11	15	7	6	9	4	6	4	9	6.4
Columbus	5	6	3	1	4	0	2	0	4	4	2.0
Dallas	10	7	12	2	8	9	4	4	9	9	7.0
Denver	3	4	4	4	4	7*	3*	1*	0*	0*	2.2
Detroit	23	44	36	28	28	28	25	19	17	17	21.2
El Paso	0	0	0	3	2	1*	1*	3*	0*	3*	1.6
Fort Worth	0	1	2	0	3	2*	0*	1*	2*	1*	1.2
Honolulu	0	0	1	0	1	0	2	1	0	1	0.8
Houston	14	13	8	21	17	17*	17*	18*	10*	20*	16.4
Indianapolis	0	0	0	0	0	7	6	5	2	1	4.2
Jacksonville	4	5	6	5	5	10*	4*	8	6	3	6.2
Kansas City	7	2	3	5	3	3	5	5	6	2	4.2
Long Beach	1	3	1	2	6	3	5	2	3	7	4.0
Los Angeles	23	29	21	14	20	30	29	31	20	14	24.8
Louisville	2	7	2	4	9	5	2	0	2	1	2.0
Memphis	10	0	5	6	6	6*	7*	1*	4*	2*	4.0
Miami	8	6	1	0	4	0*	1*	1*	1*	6*	1.8
Milwaukee	1	3	3	5	2	5*	4*	2*	0*	1*	2.4
Minneapolis	0	1	2	2	2	0*	2*	1*	0*	4*	1.4
Nashville	2	0	5	2	3	2	4	2	3	4	3.0
Newark	6	5	4	4	6	0	1	3	1	1	1.2
New Orleans	0	0	0	NR	4	18	9	7	8	18	12.0
New York	33	87	66	66	62	42	27	30	40	36	35.0
Norfolk	0	2	0	0	0	1	3	1	2	0	1.4
Oakland	0	2	1	1	2	7	2	2	3	8	4.4
Oklahoma City	0	0	0	1	0	3	3	0	3	7	3.2
Omaha	1	0	0	0	1	3	1	1	0	2	1.4
Philadelphia	19	13	12	23	29	20	11	21	18	15	17.0
Phoenix	2	1	1	2	1	5	3	5	4	1	3.6
Pittsburgh	1	2	1	0	2	1*	0*	0*	0*	2*	0.6
Portland	1	1	0	0	4	1	1	0	0	2	0.8
Rochester	1	0	0	0	1	2	1	0	0	3	1.2
Sacramento	3	2	3	0	0	0	0	0	1	0	0.2
St. Louis	7	10	10	5	11	8*	6	6	15	11	9.2
St. Paul	2	0	0	0	0	1	0	1	0	0	0.4
San Antonio	6	5	3	3	3	6	7	3	1	3	4.0
San Diego	0	2	2	2	1	0	3	5	3	8	3.8
San Francisco	4	3	3	2	2	1	4	2	2	4	2.6
San Jose	0	4	0	2	2	4	1	1	1	2	1.8
Seattle	1	5	2	5	0	4	2	2	2	1	2.2
Tampa	1	3	2	4	4	3*	2	0	1	3	1.8
Toledo	1	0	0	4	3	3	0	1	1	0	1.0
Tucson	1	0	0	0	1	1	3	3	2	2	2.2
Tulsa	0	2	2	1	4	1	1	3	3	2	2.0
Washington	10	10	8	13	11	8*	9*	6*	6	7	7.2
Wichita	2	1	1	1	.	0*	2*	1	2	2	1.4
	291	388	314	317	356	360	288	282	249	289	

Source: IACP survey of 57 U.S. cities, and
*unpublished FBI Uniform Crime Records

TABLE 3

RATE OF
JUSTIFIABLE HOMICIDE BY THE POLICE
TO 100 POLICE OFFICERS
1975-1979

Standard Format Listing		Rank Order Listing	
Akron	.13	Sacramento	.04
Albuquerque	.21	Honolulu	.05
Austin	.09	Boston	.06
Baltimore	.26	St. Paul	.07
Birmingham	.75	Newark	.08
Boston	.06	Buffalo	.09
Buffalo	.09	Austin	.09
Charlotte	.10	Charlotte	.10
Chicago	.17	Portland	.12
Cincinnati	.20	Akron	.13
Cleveland	.32	New York	.14
Columbus	.20	Toledo	.15
Dallas	.35	San Francisco	.16
Denver	.16	Denver	.16
Detroit	.40	Washington	.17
El Paso	.25	Chicago	.17
Fort Worth	.18	Minneapolis	.18
Honolulu	.05	Fort Worth	.18
Houston	.58	Rochester	.19
Indianapolis	.40	Columbus	.20
Jacksonville	.65	Cincinnati	.20
Kansas City	.35	Albuquerque	.21
Long Beach	.64	Philadelphia	.21
Los Angeles	.35	Seattle	.22
Louisville	.27	Phoenix	.22
Memphis	.31	San Jose	.24
Miami	.25	Norfolk	.24
Minneapolis	.18	El Paso	.25
Nashville	.41	Miami	.25
Newark	.08	Omaha	.25
New Orleans	.77	Baltimore	.26
New York	.14	Louisville	.27
Norfolk	.24	Tampa	.30
Oakland	.67	Tulsa	.31
Oklahoma City	.49	Memphis	.31
Omaha	.25	Cleveland	.32
Philadelphia	.21	San Diego	.33
Phoenix	.22	Los Angeles	.35
Portland	.12	Kansas City	.35
Rochester	.19	Dallas	.35
Sacramento	.04	San Antonio	.35
St. Louis	.45	Wichita	.36
St. Paul	.07	Detroit	.40
San Antonio	.35	Indianapolis	.40
San Diego	.33	Nashville	.41
San Francisco	.16	Tucson	.42
San Jose	.24	St. Louis	.45
Seattle	.22	Oklahoma City	.49
Tampa	.30	Houston	.58
Toledo	.15	Long Beach	.64
Tucson	.42	Jacksonville	.65
Tulsa	.31	Oakland	.67
Washington	.17	Birmingham	.75
Wichita	.36	New Orleans	.77

Rate = Yearly average of Justifiable Homicides by Police to yearly average of police officers (100)

Mean = .28

The JHR's for the 54 respondent cities are presented in Table 3. We caution the reader to be extremely careful in comparing the rates of one city to those of another. The reader should not look for simple causes for the wide variation between cities—there are none. The answers lie somewhere within a combination of some of the 350 factors related to criminal activity, police administration, police operations, and other community variables which were hypothesized as possibly affecting the rate of justifiable homicide committed by the police. Arguments could also be made for societal factors that were not detailed such as unemployment, inflation, gun control, and education.

Model Data Collection System

The review of the several data collection systems highlighted the need for a single comprehensive system that would incorporate the positive features of each of the existing programs. Such a system should mandate submission and provide for publication of the results. The following specific guidelines are recommended.

Recommended Guideline

Every law enforcement executive should submit comprehensive data to the FBI Uniform Crime Records Section for every incident that culminates in the death of a citizen as a result of use of force by a police officer.

Deadly force data should be submitted by the agency which employs the involved officer.

The Federal Bureau of Investigation should prepare and publish an annual report of the deadly force data.

Data submission should include the following specific elements:

- *Date of incident*
  - *Time of day*
  - *Day of week*
- *Date of death*
- *Jurisdiction where incident occurred*
- *Jurisdiction of officer (specific agency)*
- *Age, sex, race of officer*
- *Age, sex, race of victim*
- *Criminal background of victim*

- *Relationship of victim to officer*

- *Officer's status at time of incident*
  - *On duty*
    - *In uniform*
    - *Out of uniform*
    - *Specific work assignment*
    - *Specific type of incident (Dispatched as actually found to be)*
  - *Off duty*
    - *In uniform*
    - *Out of uniform*
    - *Situation*

- *Weapon used*
  - *Firearm*
    - *Type*
    - *Caliber*
    - *On-duty weapon*
    - *Off-duty weapon*
    - *Back-up weapon*
  - *Other weapons*
    - *Specifications of the weapon used*

- *Circumstances*
  - *During commission of a crime (specific)*
  - *Gun cleaning*
  - *Accident (specific: e.g., firearms range, inspection, unauthorized person handling weapon, etc.)*

SECTION 4

CRIME LEVELS AND JUSTIFIABLE HOMICIDE BY POLICE

Various authors have indicated that there may be a serious flaw in the statistical reporting of justifiable homicides by the police.[1] Other criminal justice authorities, who recognized the reporting limitations, have called for mandatory reporting of justifiable homicides.[2] Despite the known limitations, it was felt that a careful analysis of justifiable homicide data would yield important information. Accordingly, it was possible to secure from the FBI Uniform Crime Reports Section unpublished data regarding justifiable homicide for the years 1970-79. For the years 1975-79, the data were verified with the reporting police agencies.

Although the data were not always equivalent, it was ultimately possible to resolve discrepancies that existed between FBI data and data submitted directly to IACP from the police agencies. Table 2 in Section 3 reflects the justifiable homicides in 57 cities for the years 1970-79. Table 4 reflects the combined total of the 57 cities with percentage increases from year to year.

Using the justifiable homicide totals from Table 2 as the common denominator, a comparison was made of the totals of selected crimes and justifiable homicide from the same cities. The following were found to be significantly correlated to justifiable homicide by the police:

Correlation	Acts of Violence
.60	robbery offenses
.56	police officers murdered
.48	justifiable homicide by civilian
.27	total community homicide

Next, a comparison was made of each individual city's justifiable homicides by the police to selected crimes and justifiable homicide. This comparison was made using a five-year average of justifiable homicide (see Table 2) with the five-year average of crime. The significant correlations were:

Correlation	Acts of Violence
.89	homicide
.78	violent crime
.76	robbery
.68	justifiable homicide by civilians
.55	police officers murdered

These correlations constitute a central finding of this report. The findings imply that the use of deadly force by the police is concentrated within an environment of community violence

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[1]Lawrence W. Sherman & Robert H. Langworthy, "Measuring Homicide by Police Officers," Journal of Criminal Law and Criminology, 546 (1979).

[2]Joseph Dominelli, IACP News Release, December 1979.

TABLE 4

JUSTIFIABLE HOMICIDE BY POLICE
1970-1979
57 U.S. CITIES

Year	Homicides	Percent Change
1970	291	
1971	388	+33.3
1972	314	-19.1
1973	317	+ 0.9
1974	356	+12.3
1975	360	+ 1.1
1976	268	-25.6
1977	262	- 2.2
1978	249	- 5.0
1979	289	+16.1

SECTION 5

RACE AND JUSTIFIABLE HOMICIDE BY THE POLICE

As other researchers have also indicated,[1] this study found that blacks are over-represented (59.6) as victims of police use of deadly force. However, our findings, in agreement with Geller and Milton, also show that blacks are also over-represented in other areas of violence:

- Blacks are over-represented (73.1%) as victims of justifiable homicide by civilians.
- Blacks are over-represented (66.1%) as persons arrested for homicide.
- Blacks are over-represented (71.0%) as persons arrested for robbery.
- Blacks are over-represented (63.7%) as persons arrested for violent crimes.
- Blacks are over-represented (57.9%) as persons arrested for weapons violations.

The findings of black over-representation in arrests for crime and as victims of justifiable homicide are supported in part by major findings in other research. Fyfe reports that black suspects are far more often armed with guns when they confront the police than are whites.[2] This finding was also supported by FBI data.[3] In proportion to the number of encounters, more police officers are killed in the line of duty by blacks than by whites; black involvement with robbery incidents is twice the rate of white involvement. Geller and Karales[4] found that black and Hispanic civilians are slightly less likely than whites to be shot by the police if forcible felony arrests are used as an indicator of police-civilian encounters that could result in shootings.

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[1]James Fyfe, Shots Fired: An Examination of New York City Police Firearms Discharges (Ann Arbor, Mich.: University Microfilms International, 1978).

William A. Geller and Kevin J. Karales, Split Second Decisions: Shootings of and by Chicago Police (Chicago: Chicago Law Enforcement Study Group, June 1981).

Arthur L. Kobler, "Figures (and Perhaps Some Facts) on Police Killing of Civilians in the United States," Journal of Social Issues, Vol. 31, No. 1, 1975.

Catherine Milton, Jeanne Wahl Halleck, James Lardner, Gary L. Abrecht, Police Use of Deadly Force (Washington, D.C.: The Police Foundation 1977).

Gerald D. Robin, "Justifiable Homicide by Police Officers," 54 Journal of Criminal Law, Criminology and Political Science 225 (1963).

[2]Fyfe, Shots Fired: An Examination of New York City Police Firearms Discharges, pp. 130-137.

[3]FBI, Law Enforcement Officers Killed, 1979 (Washington, D.C.: U.S. Department of Justice 1979).

[4]Geller and Karales, Split Second Decisions: Shootings of and by Chicago Police, p. 118.

Samuel Meyers[5] reported an over-representation of blacks among the arrested, the convicted, the incarcerated, and among those bearing the official label of criminal or ex-offender. The Board of Police Commissioners[6] reported that blacks were over-represented in percentage of fatal shootings, attempts with a deadly weapon upon a police officer, attacks on officers, and Part I arrests. Milton, et al.,[7] went on to say that the over-representation was not inconsistent with the number of blacks arrested for serious criminal offenses.

In light of the general thesis of this report, i.e., the frequency of justifiable homicide by the police is related to the level of crime and violence within a community, it is understandable that blacks are over-proportionately represented among the victims of the police use of deadly force since blacks have been shown to be overrepresented as arrestees in crime and violence.

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[5]Samuel L. Meyers, Jr., "The Incidence of Justice," The Costs of Crime, Charles M. Gray (ed.), Sage Criminal Justice System Annuals, v. 12 (1979).

[6]Board of Police Commissioners of Los Angeles, The Report of the Board of Police Commissioners Concerning the Shooting of Eulia Love and the Use of Deadly Force, Parts I-IV (Los Angeles: Board of Police Commissioners, 1979-1980).

[7]Milton, Halleck, Lardner and Abrecht, Police Use of Deadly Force.

SECTION 6

DEPARTMENTAL PRACTICES AND JUSTIFIABLE HOMICIDE BY THE POLICE

A major component of the research project included a descriptive "survey" of 51[1] police agencies. The survey instrument was designed to collect data relative to how personnel practices, training, policy, procedure, equipment, and other organizational considerations might impact on the use of deadly force. The survey responses were compared against policy and justifiable homicide rates.

The previous findings in deadly force literature point to a multiplicity of causal factors associated with deadly force statistics. This multiplicity was accepted as a starting point in developing hypotheses and related questions to test the hypotheses.

Each survey question or set of questions was developed to collect sufficient data from which to test forty (40) hypotheses concerning the impact that policy, organization, equipment, and training had on the rate of justifiable homicide by police (JHR). Each of the hypotheses was subjected to one or more statistical analyses (time series intervention, t-test, or correlation). Among the more important findings which can be inferred from the analyses are the following:

- Departments with sufficient numbers of street supervisors providing tactical guidance and manpower support have a lower incidence of use of deadly force (H-3).

- When an agency chooses to have a stakeout unit without a management policy directive, its JHR is significantly greater than those agencies with a policy directive (H-8).

- Although the presence of a decoy unit has no statistically significant bearing on the JHR, the existence of a unit with a policy directive seems to reduce the agency's JHR (H-10).

- The review of deadly force incidents by the chief of police seems to be related to a lower JHR (H-14).

- In-service crisis intervention training as opposed to pre-service training was associated with a low JHR (H-14).

- Agencies with simulator, stress, and physical exertion firearms training experience a higher JHR than agencies without such training (H-25).

- Marksmanship awards given to officers for proficiency in firearms training are associated with high JHR (H-27).

- In-Service training in the principles of "officer survival" is correlated with a high JHR (H-29).

- Agencies which require a .38 caliber weapon and ammunition experience a lower JHR than agencies which permit officers to carry a larger caliber weapon (H-31).

[1] Fifty-four responded to the survey.

- Agencies that issue shotguns to their officers experience a higher JHR than agencies that do not issue such ancillary weapons (H-32).

SECTION 7

DEPARTMENTAL POLICY AND JUSTIFIABLE HOMICIDE BY THE POLICE

The responses from police departments reflected a consciousness among municipal police executives that written policy governing police use of deadly force is necessary for the control of police personnel. This was demonstrated by the existence of written policy in 53 of 54 (98.1 percent) agencies which responded to our project request. For the three non-respondent agencies, it is not known whether those agencies are governed by a written deadly force policy.

Comprehensiveness of Policy. The policy content analysis identified five specific areas that serve to form comprehensive deadly force policy. Those areas are:

- When to shoot.
- Investigative procedure following a shooting.
- The shooting review process.
- Firearm equipment standards (on-duty, off-duty, back-up).
- Firearm training standards.

Previous research[1] has indicated that a more restrictive administrative posture and policy on the use of deadly force can reduce the number of police shooting incidents without any attendant increase in crime or injury to police officers or a decline in police arrest activity. Our research has not conclusively replicated this finding, nor has it disproved the finding. Tables 5 and 6 summarize the differences of justifiable homicide rates (JHR) between agencies with restrictive deadly force policy, and those agencies with less restrictive policy. The differences in this analysis are not statistically significant.

However, where the findings of this research are considered in light of other research findings, there is sufficient evidence to indicate that lives can possibly be spared if certain administrative guidelines are clearly developed, presented, understood, and enforced by law enforcement management.

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[1] James Fyfe, Shots Fired: An Examination of New York City Police Firearms Discharges (Ann Arbor, Mich.: University Microfilms International (1978), p. 272.

Lawrence W. Sherman, "Perspectives on Police and Violence," 452 Annals of American Academy of Political and Social Science, 63 (November 1980).

Lawrence W. Sherman, Reducing Police Gun Use: Critical Events, Administrative Policy and Organizational Change (unpublished draft) October 1980.

TABLE 5

USE OF DEADLY FORCE POLICY
TO MAKE ARRESTS

	Permit Use of Deadly Force			Do Not Permit Deadly Force			Policy Does Not Address Issue		
	Number	Percent	JHR	Number	Percent	JHR	Number	Percent	JHR
Self-defense	51	96.2	.28	0	0	0	2	3.7	.26
Defense of third party	51	96.2	.28	0	0	0	2	3.7	.26
Arrest misdemeanant	0	0	0	50	94.3	.28	3	5.6	.27
Arrest felon threatening deadly force	45	84.9	.28	5	9.4	.31	3	5.7	.27
Arrest felon who used deadly force	43	81.1	.28	7	13.2	.30	3	5.7	.27
Arrest felon presenting risk	48	90.6	.31	2	3.8	.16	3	5.7	.27
Arrest atrocious felon	22	41.5	.26	28	52.8	.30	3	5.7	.27
Arrest juvenile	49	92.5	.28	1	1.9	.67	3	5.7	.27
Arrest any felon	4	7.5	.37	46	86.8	.29	3	5.7	.27

TABLE 6

USE OF DEADLY FORCE POLICY
TO RECAPTURE ESCAPEE

	Permit Use of Deadly Force			Do Not Permit Deadly Force			Policy Does Not Address Issue		
	Number	Percent	JHR	Number	Percent	JHR	Number	Percent	JHR
Self-defense	52	98.1	.28	0	0	0	1	1.9	.24
Defense of third party	52	98.1	.28	0	0	0	1	1.9	.24
Recapture misdemeanant	2	3.8	.18	47	88.7	.29	4	7.5	.22
Recapture felon threatening deadly force	41	77.4	.29	8	15.1	.27	4	7.5	.24
Recapture felon who used deadly force	38	71.7	.28	11	20.8	.26	4	7.5	.24
Recapture felon presenting risk	44	83.0	.30	5	9.4	.19	4	7.5	.24
Recapture atrocious felon	22	41.5	.27	27	51.0	.31	4	7.5	.24
Recapture juvenile	48	90.6	.28	1	1.9	.67	4	7.5	.24
Recapture any felon	9	17.0	.29	40	75.5	.29	4	7.5	.24

SECTION 8

MODEL DEADLY FORCE POLICY GUIDELINES

A major product of this research project is a set of "model" policy guidelines to control the use of deadly force by the police. These guidelines are based on the total knowledge and understanding of the issues which were gained through the preparation of the project report.[1]

These guidelines should not be viewed as a finished product, but rather as a beginning or point of departure. Each police agency should construct its own model, using the research and material in this publication as a framework. Choices made in this report are suggested and proffered to encourage refinement and discussion. The final choices belong to the policymakers of the individual law enforcement agencies.

Police Policy v. State Law

Members of the public are victims of violent crime including the crime of final resort—murder. Society chooses not to wage open warfare to control such violence. Rather, society places the responsibility for control on a few—the police. Society further chooses to provide these officers with the ultimate personal and public protection—a firearm. As long as we live in this free society, it will be necessary for police officers to be armed. Since society has given law enforcement officers the authority to carry firearms, society must also retain the right to control the use of such firearms. The available control options are state and local law and administrative policy. However, state legislatures have taken varied routes to the control of police firearms. These laws may or may not satisfy the public's desires for the control of firearms.

A police administrator is commissioned to establish departmental goals that will reflect the needs of the community. In establishing such goals, it is indeed proper to set a level of operational standard that reaches for the highest plateau that the community will accept. This is unlike the legislative law which seeks merely to satisfy the majority. There is no debate concerning the desire by all to protect human life; this includes the life of a suspected felon.

Recommended Guideline

Every police chief should promulgate a Police Use of Deadly Force policy that provides clear guidelines for (1) when to shoot, (2) the investigative procedure following a shooting, (3) a Board of Review, (4) firearm equipment requirements, and (5) firearms training.

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[1]The reader is urged to refer to the final report: Kenneth J. Matulia, A Balance of Forces (Gaithersburg, Md.: International Association of Chiefs of Police, 1982).

Definition of Deadly Force

Deadly force can be inflicted in many ways. The police have been recorded as using revolvers, shotguns, rifles, batons, flashlights, fists, and feet. Regardless of the factual validity of the charges, the potential to apply deadly force in these manners is present. Every police administrator should design policy that addresses all of these forms of deadly force.

Recommended Guideline

"Deadly Force" as used in this policy is defined as that force which is intended to cause death or grave injury or which creates some specified degree of risk that a reasonable and prudent person would consider likely to cause death or grave injury.

Legal Disclaimer

It is fitting for a police administrator to establish departmental goals and promulgate policy in order to restrict his officers to standards beyond that of the legal standard. Standards required by the department as transmitted through policy should not be deemed applicable for introduction in any criminal or civil proceeding, lest the policy succumb to the lower legislative standard. Departmental policy serves also to establish the highest level of training to guide officers in anticipation of critical situations. When after the fact those situations have gone astray, the officers should be subjected to additional or different training or negative departmental sanctions (also a form of training). Likewise, the department should be made to rethink policy and training in an effort to again anticipate new situations.

Many attorneys contravene this argument and make every attempt to introduce administrative standards as legal charges against officers in criminal or civil actions. However wrong this affront of managerial prerogative, the threat remains real. Court decisions[2] have permitted department policy to be introduced as legal evidence. Other courts[3] have had the wisdom to recognize the danger of substituting administrative policy for legal standards. The legal minds have not resolved this difference to a single standard.

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[2]Dillenbeck v. City of Los Angeles, 72 Cal. Rptr. 321, 446 P.2d 129 (1969).

Grudt v. City of Los Angeles, 2 Cal.3d 375, 86 Cal. Rptr. 465, 468 P.2d 825 (1970).

[3]City of St. Petersburg v. Reed, 330 So.2d 256 (Dist. Ct. App. 1976).

Chastain v. Civil Service Board of Orlando, 327 So.2d 230 (Dist. Ct. App. 1976).

Every administrator must recognize this threat, prepare for the defense, and accept the responsibility to state deadly force policy in clear and unequivocal language. The administrator must not be constrained to drafting weak policy and training simply to avoid the possibility of prejudice in court. Where a trial judge permits the department policy to be introduced, the jury should at least be made aware of the injustice through the introduction of the following statement. This statement should preface any use of deadly force policy.

Recommended Guideline

This directive is for departmental use only and does not apply in any criminal or civil proceeding. The department policy should not be construed as a creation of higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this directive will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

Value of Human Life

Any deadly force policy must consider the moral responsibility for protecting human life, the desire of the people to be secure in their person and property, and the constitutional right of trial and due process. Society must be reluctant to license death by police officers. But society also has an obligation to permit their police officers the privilege of self-protection. Secondly, society must weigh the consequences of allowing criminals the freedom to carry out their crimes in an atmosphere of relative safety. The police are subservient to the public, and therefore must not themselves be placed in a position of choosing between the alternatives of criminal freedom versus use of deadly force. The only decision that is the sole prerogative of the individual officer is that of self-protection. All other balancing of justice should remain with the total community. The level of law enforcement success also remains a community decision. In this regard, the police are relegated to a status of "advisors," not lawmakers.

Recommended Guideline

The value of human life is immeasurable in our society. Police officers have been delegated the awesome responsibility to protect life and property and apprehend criminal offenders. The apprehension of criminal offenders and protection must at all times be subservient to the protection of life. The officer's responsibility for protecting life must include his own.

Defense of Life

The three major legal standards—common law, modified common law, and the model penal code—are surrounded by numerous "model" policies, resolutions, and guidelines. Without exception, each of the policy models includes a police self-protection clause and a defense-of-the-third-party life clause. Clearly, an officer must have an honest, sincere, and personal belief that his life or the life of another is in immediate danger. Where he has such a belief, it is unconscionable to expose his own life or another innocent person's by not permitting use of deadly force against the suspected criminal assailant. The minimum standard for defending the self-defense position should be the reasonableness which is expected of a well-trained, prudent police officer. His resort to deadly force to protect another should be guided by the same standard as is permitted for his self-protection. The judgment of reasonableness should be by other police officers with similar distilled experience, education, and training who can be objective and intelligent while recognizing the complete scenario. Justification for the use of deadly force must be limited to the facts known to the officer or perceived by the officer at the time he decides to shoot. Facts unknown to the officer must not be considered in later determining justification of the shooting.

In assuming the responsibility for self-defense, the officer should not be required to unreasonably place himself in situations where deadly force is presumed imminent. Likewise, an officer should not be censured or disciplined if he chooses not to employ deadly force in situations where others may, after the fact, reason that the situation clearly authorized the use of such force.

Recommended Guideline

An officer may use deadly force to protect himself or others from what he reasonably believes to be an immediate threat of death or (near death) critical bodily harm.

Fleeing Felon

The entire issue of using deadly force against a misdemeanant versus a felon seems to have been caught up in a dated controversy. The original definitions of the terms misdemeanor and felony have long been lost in time. Many crimes have been added to the felony category that present no immediate threat of danger to the police officer (e.g., conspiracy to defraud, embezzlement). Conversely, statistics indicate than when police officers are killed, more than 30 percent of the encounters begin with a misdemeanor crime or lesser confrontation.[4]

There are times when the officer's life or the life of a third party is not in immediate danger yet the situation is so serious that deadly force

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[4]Arthur L. Kobler, "Figures (and Perhaps Some Facts) on Police Killings of Civilians in the United States," Journal of Social Issues, Vol. 31, No. 1 (1975), p.188.

may be authorized. Such circumstances[5] might include where an injured officer cannot escape and must shoot to prevent a suspect from going to an adjoining room and arming himself, it being apparent that the person has such ability and intent. This guideline is merely an extension of the previous terminology of immediate. It provides room for an officer to anticipate slightly beyond his actual vision, but does not extend to the vagueness of a fleeing atrocious felon rule. The phrase "grave bodily harm" is suggested here to mean bodily harm that is more than likely to lead to a fatal conclusion. It is recommended that this section not include the atrocious felonies as generally specified in modified common law (arson, burglary, rape, kidnap, extortion, and robbery). The atrocious felonies of mayhem and aggravated assault can be considered as potentially resulting in a fatal conclusion. The heinous crime of rape, however repulsive, normally does not conclude with death of the victim and never with capital punishment for the demented perpetrator.

Recommended Guideline

An officer may use deadly force to effect the capture or prevent the escape of a suspect whose freedom is reasonably believed to represent an imminent threat of grave bodily harm or death to the officer or other person(s).

Juveniles

The shooting of a juvenile by a police officer creates considerable community concern. Likewise, the psychological after-effects on the officer are often more severe when a juvenile is involved. Pressures placed on the police agency are often brought about through newspaper accounts of the incident. While the shooting of juveniles should be avoided except in the most life-threatening of situations, a policy directive that specifically prohibits a police officer from employing deadly force against a juvenile presents an unreasonable demand for judgment by an officer and exposes him to great personal danger. In a life-threatening situation, the police officer should not be required to ask for identification before resorting to deadly force.

Recommended Guideline

No distinction shall be made relative to the age of the intended target of deadly force. Self-defense and imminent threat shall be the only policy guideline for employing deadly force.

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[5]Royce A. Fincher, Jr., "Police Use of Deadly Force," The Police Yearbook (Gaithersburg, Md.: International Association of Chiefs of Police, 1973) p.98.

Risk to Innocent Persons

When an officer faces a decision to use deadly force, he must not only consider the intended target victim but must also be cognizant of the likelihood that innocent third parties may be present in the line of fire. The rationale here is that an attempt to stop a dangerous person from escaping immediate apprehension is never worth endangering innocent persons by lawful police action. But, the right of self-defense and defense of others by the officer obligates the officer to enter into certain life-threatening situations. This obligation should not extend to a sacrifice of the officer because of a possibility of killing innocent persons.

Recommended Guideline

Officers are prohibited from discharging firearms when it appears likely that an innocent person may be injured.

Shots Fired At or From Motor Vehicles

Shooting at or from motor vehicles is a significant use of deadly force issue, but an issue not clearly recognized in many departmental policy statements. Project research did not specifically elicit information regarding the number of incidents in which officers used deadly force from a motor vehicle or at a perpetrator in a vehicle. Statistically, there is not a great deal of information available concerning this issue. Fyfe[6] found that officers are involved in shooting incidents when being "assaulted" by a vehicle in 1.1 percent of the total incidents. Where two or more officers were assaulted, the figure rose to 6.1 percent. A five-year analysis of law enforcement officers killed in the United States does not show a single death resulting from assault by motor vehicle.[7] Philosophical discussions of this category of shooting raise the issues of (1) difficulty in hitting the target, (2) ricochets striking innocent persons, (3) population densities, (4) difficulty in penetrating steel radial tires, and (5) inability to put a stop to vehicle momentum even when the target suspect is hit.

Recommended Guideline

Officers should not discharge a firearm at or from a moving vehicle except as the ultimate measure of self-defense or defense of another when the suspect is using deadly force by means other than the vehicle.

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[6]James Fyfe, Shots Fired: An Examination of New York City Police Firearms Discharges (Ann Arbor, Mich.: University Microfilms International, 1978).

[7]FBI, Law Enforcement Officers Killed 1979 (Washington, D.C.: U.S. Department of Justice, 1980).

Shots to Destroy Animals

With the possible exception of humane societies, there is not much hue and cry for reducing the number of shots fired to destroy animals. As a matter of fact, we know of no incident in which an intended shot at an animal has resulted in the death of a human.

Fyfe[8] found that 9.3 percent of all shootings in New York City were directed at animals. This factor alone is sufficient to warrant some controls on the shooting of animals. Any time an officer is permitted to draw his weapon (shooting animals, firearms training, inspection, or against a suspect), the potential for discharging the weapon and injuring or killing a human being exists.

Recommended Guideline

The killing of an animal is justified (1) for self-defense, (2) to prevent substantial harm to the officer or another, or (3) when the animal is so badly injured that humanity requires its relief from further suffering.

A seriously wounded or injured animal may be destroyed only after all attempts have been made to request assistance from the agency (humane society, animal control, game warden, etc.) responsible for the disposal of animals. The destruction of vicious animals should be guided by the same rules set forth for self-defense and the defense and safety of others.

Warning Shots

The analysis of warning shots and shots to summon assistance has been neglected in many of the research efforts reviewed. Likewise this project did not obtain sufficient information to link warning shots to justifiable homicide rates. Most of the departments (67.9 percent) surveyed did not permit the use of warning shots. The rationale for such policies include the belief that warning shots are a liability because of: the potential risk to innocent persons, the threat of inappropriate response from other officers who mistake the warning as an intended shot at the officer, and the legal consequences associated with a warning that strikes an unintended target.

Recommended Guideline

A police officer is not justified in using his firearm to fire a warning shot.

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[8]Fyfe, Shots Fired: An Examination of New York City Police Firearms Discharges, p.374.

On-duty Handgun and Ammunition

The debate concerning the effectiveness of various caliber and style of police weapons is longstanding. Officers have grappled with this issue among themselves and with special interest groups. The issue of caliber, lead weight, and ammunition point style has been the center of considerable research. The traditional weapon and ammunition is the .38. Many agencies in recent years have adopted a larger .41, .44, or .45, and others have opted for the .357 and 9mm. Interestingly, Geller[9] found that a disproportionate number of accidental shootings by police officers involved semi-automatic weapons.

Recommended Guideline

All on-duty officers shall be armed with a department approved firearm.

Back-up or Secondary On-duty Weapon

Police officers in the United States are all conspicuously armed with a revolver or semi-automatic handgun. This fact is recognized and, for the most part, approved of by most of our citizenry. A second fact, not commonly known, is that many police officers also carry a concealed secondary weapon. There are several stated reasons for the practice. Officers are concerned about being disarmed during a confrontation; officers are less likely to be caught off guard when a confrontation is not anticipated; officers can less conspicuously be prepared to protect themselves during "routine" citizen stops. Regardless of the rationale, the practice is considered acceptable by knowledgeable police officials but treated by many police administrators as something that is understood but not formally admitted. A major criticism of the back-up weapon is that it may be intended as a "throw away" in the event that an officer shoots an unarmed suspect. In order to protect the officers from such allegations, the study recommends a strict policy of registering all back-up and off-duty weapons carried by officers. The issue of secondary weapons must be addressed in every detail in policy.

Recommended Guideline

A secondary (back-up) on-duty handgun is authorized but only upon meeting specific department approval.

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[9]William A. Geller and Kevin J. Karales, Split Second Decisions: Shootings of and by Chicago Police (Chicago: Chicago Law Enforcement Study Group, June 1981), p.199.

Off-duty Weapons

Police departments vary in their requirements that officers carry firearms while off duty and whether other weapons such as mace and batons are carried. For example, a recent survey[10] of 50 large departments showed that 24 required their officers to be armed off duty while the remainder either gave the officers the option or prohibited the practice.

Previous research findings by Fyfe[11] and Milton[12] indicated that a significant number of homicides by police were occurring when the shooting officers were off duty. Fyfe found that 21.5 percent of all police shootings in New York City involved off-duty officers and that off-duty shootings violated law or departmental shooting guidelines significantly more often than on-duty shootings. In a study of 320 shooting incidents in seven cities, Milton found that 17 percent involved off-duty personnel.

There appears to be research agreement that off-duty officers account for a significant number of total justifiable homicides by police. With this known, it now becomes necessary for legislators, police executives, and citizens to determine the cost/benefit relationship between off-duty shootings and off-duty officer safety, crime prevention, and criminal apprehension. The factor of crime prevention has not been sufficiently measured statistically. One major study[13] has reported some inferences about crime prevention by uniformed police officers, but a scientific measurement has not been made. Therefore, a measurable comparison of off-duty shootings to crime must of necessity be relegated to a statistical comparison of off-duty arrests and crime clearances by death of the perpetrator.

A second measurable cost/benefit relationship may be comparison of on-duty police officer deaths to off-duty police officer deaths. In 1979, 106 law enforcement officers were reported killed in the line of duty.[14] Of this total, 11 (10.4 percent) were reported to be off duty.

Other factors that must be measured when considering the cost or benefit of arming off-duty police officers are the community fear and the jeopardy of police officers who routinely deal with dangerous persons while on duty. Can we measure the potential for criminals to strike back at police officers who while off duty are known to be unarmed? This becomes especially critical when considering either the black or Hispanic police officer, since Fyfe[15] found

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[10]John F. Heaphy, (ed.), Police Practices: The General Administrative Survey (Washington, D.C.: Police Foundation, 1978).

[11]Fyfe, Shots Fired: An Examination of New York City Police Firearms Discharges.

[12]Catherine Milton, Jeanne Wahl Halleck, James Lardner, Gary L. Abrecht, Police Use of Deadly Force (Washington, D.C.: Police Foundation, 1977).

[13]George L. Kelling, Tony Pate, Duane Dieckman and Charles E. Brown, The Kansas City Preventive Patrol Experiment (Washington, D.C.: Police Foundation, 1974).

[14]FBI, Crime in the United States 1979 (Washington, D.C.: U.S. Department of Justice, 1980).

[15]Fyfe, Shots Fired: An Examination of New York City Police Firearms Discharges, p.170.

that they were far more likely to have fired their guns off duty than were whites. This variation was associated with the disproportionate presence of off-duty minority officers in the cities' most hazardous areas. The individual officer must also weight his likelihood of using his weapon in a personal confrontation, especially so with female spouses or acquaintances. As Fyfe[16] noted, the most severe consequence of firearm discharge incidents involving lone females are generated between off-duty officers and female acquaintances.

Recommended Guideline

Officers are encouraged, but not mandated, to carry a handgun when off duty. An officer who elects not to carry a handgun while off duty shall not be subjected to disciplinary action if an occasion should arise in which he could have taken police action if he were armed. (Exception) Off-duty officers while operating a department vehicle shall be armed with an approved weapon.

Registration of Police Officers' Weapons

As evidenced in the preceding pages, specific orders to control firearms are often absent in written policy. The findings concerning on-duty, off-duty, and back-up weapons, ammunition, and operational strategies clearly indicate that policymakers must expend considerable attention to these issues. The policy decisions concerning firearms must not be relegated to the complete discretion of the individual police officers. This policy must be addressed squarely and completely from the highest level of police management.

Recommended Guideline

A department-approved handgun (on-duty, off-duty, secondary) intended for official use by any police officer must meet the following requirements:

- *The firearm must be .38 caliber.*
- *The firearm must be loaded only with .38 caliber ammunition (grain weight and jacket should be specified).*

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[16]Fyfe, Shots Fired: An Examination of New York City Police Firearms Discharges, p.158

- *The firearm must be inspected, fired, and certified safe by the department armorer.*
- *The firearm must be registered with the department by make, model, serial number, and ballistic sample.*
- *The officer must demonstrate his safe and proficient use of the weapon during regular firearm qualification sessions.*
- *The officer must meet "certification" requirements with each approved weapon.*

Firearms Training

The training of officers in firearms proficiency, safety, and legalities is undoubtedly the most critical of the several training areas. A police department may be financially liable if one of its officers uses deadly force. This gives the department a legitimate interest in setting standards of firearms use. A single recent court case[17] more vividly illustrates this issue. The court cited the following factors as evidence of grossly inadequate firearms training:

- The officer's firearms training took place 10 years prior to the shooting incident.
- In-service firearms training took place only twice a year.
- The firearms training did not include shooting at moving targets.
- The training did not include night shooting.
- The training did not account for shooting in populated residential areas.

The police administrator is inundated today with numerous claims of "best" firearms training programs. These claims include practical pistol course, tactical course, exertion course, stress course, and numerous shooting simulator courses, to name only a few. Project research indicated a significant relationship between high justifiable homicide rate (JHR) and the exertion and stress courses. This finding, however, is only one of a multitude of suggested relationships, but one which should be considered when designing a firearms training program.

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[17] Popow v. City of Margate, 484 F. Supp. 1195 (D.C.N.J. 1979).

A more positive relationship has been linked to the off-range classroom firearms training. It is somewhat apparent that non-shooting firearms training has been neglected in many agencies. This neglect is more profound concerning in-service officers than pre-service officers, although both require considerable attention. Training administrators should increase the hours of legal, moral, and policy aspects in their non-shooting firearms training sessions.

Recommended Guideline

All officers shall be "certified" with their primary and secondary on-duty weapons and their off-duty weapon. "Certification" shall include training regarding the legal, moral, and ethical aspects of firearms use; safety in handling firearms; and proficiency in the use of firearms.

Firearms "certification" shall be required at least quarterly. And, in the event of any accidental discharge, the officer involved must undergo an immediate re-certification training prior to returning to full duty.

Officers who fail to meet certification requirements will be granted a 10-day grace period. Within the 10-day period, the officer must on his own time report to the training academy for remedial training and certification. Officers who fail to achieve certification after attending remedial firearms training will be placed on suspension. After one week on suspension, if the officer has still failed to achieve certification, he shall be suspended for failing to maintain standards or, in the case of physical or mental disabilities, the officer shall become eligible for disability retirement.

Legal Issues

An officer involved in the use of deadly force can be subjected to several areas of criminal and civil jeopardy in addition to being vulnerable to potential departmental discipline. Individually, the officer involved in a shooting can be held culpable for violation of state criminal statutes. Civil liability can also be imposed for the use of deadly force under state sanctioned civil causes of action. In addition, an officer faces individual civil and criminal jeopardy under federal law for violation of the federal Civil Rights ct (18 U.S.C. 241 and 242 criminally and 42 U.S.C. 1983 civilly). Recent United States Supreme Court decisions now also place a state, county, or municipal entity/agency vulnerable to monetary damages under 42 U.S.C. 1983.

These potential legal actions and litigation place a great strain on both the officer and the law enforcement agency. While the department should not condone malicious and intentional brutality or an unlawful use of deadly force by its officers, an officer must be afforded the same legal assistance and guidance as any other private citizen. In providing an officer immediate legal assistance through the use of an attorney, the officer is afforded an opportunity to justify his or her actions as well as to prepare immediately to justify such actions in future criminal or civil litigation. In view of the recent decisions abrogating the sovereign immunity defense for a department, this early presence and legal assistance also provides immediate assistance in preparing to defend any legal action against the department in federal court.

It must never be forgotten that litigation arising out of police use of deadly force occurs many years after the incident has occurred. This necessitates the preparation to defend such action and use of force by the officer immediately after the incident. The presence of legal counsel can be invaluable in gathering information to put a case in prime defense posture by on-scene assistance to sworn personnel, particularly in terms of preserving the shooting scene and protection of physical evidence that can be vital in exonerating the officer's action in court at a later date. Scrutiny of the facts and circumstances surrounding the shooting from an attorney's viewpoint can assist in determining the relative strengths and weaknesses of a case in terms of legal sufficiency.

A police officer employing deadly force in good faith and within legal guidelines is acting in the performance of his or her sworn duties on behalf of the population of the community served by his or her department. A primary function of law enforcement services is to protect the citizenry, deter criminal misconduct, and prevent the commission of criminal acts. In order to perform these duties, an officer is screened, selected, trained, employed, and equipped to meet the demands of the law enforcement profession. Eventually, he or she is assigned to patrol or street duties with departmental approval. It is a presumption that mental and psychological soundness was scrutinized and found to be of the soundness warranting the issuance of a firearm to that officer to assist in the performance of statutory duties as well as to protect the life and safety of the officer.

Having given the officer the necessary equipment to perform assigned duties, it must be presumed until proven otherwise by sufficient evidence that the firearm was used only for the furtherance of official duties and responsibility to the general public. This weapon is being used only because it was placed in that officer's hand by the citizenry for appropriate use in the performance of public service to the community. Accordingly, it is incumbent on this same citizenry to support an officer involved in the use of deadly force so long as it can be established that the use of such force was reasonable, in the line of duty, and in good faith. This departmental support should be established at the earliest stages of post-shooting investigations and, when appropriate use of deadly force is established, remain firm despite outside press, media, federal government, or civil litigation pressures.

This obligation for supportive response by the general citizenry is one required by equitable, legal, as well as moral considerations. In addition, early demonstration of departmental support for officer-involved shootings may help relieve labor problems within a department and assist in establishing what is unfortunately too common a credibility gap between administration and line personnel. Officer morale will also be enhanced by such departmental support.

Every private citizen has a right to an attorney to assist in the defense of criminal and civil matters in which he is a potential defendant. A police officer performing sworn duties must be afforded no less than these same guaranteed rights before, during, and in conjunction with an officer-involved shooting investigation. The constitutional guarantee that a person is innocent until proven guilty by a court of law must of necessity be extended to a police officer, particularly in view of the additional pressures and burdens that officer use of deadly force invokes. For example, lay juries often place a very unfair burden on an officer to prove innocence rather than the converse and assume that the officer would not have been broughtto trial were he or she not in fact guilty as charged. In order to assure this guarantee, the police agency should provide legal services to its officers. This assistance of legal counsel is also vital in protecting that officer from a civil judgment for monetary damages arising out of a shooting incident.

Recommended Guideline

A department-furnished attorney should be immediately notified of any officer-involved shooting incident. The attorney shall immediately proceed to the scene of the shooting to meet with and establish a lawyer-client relationship with that officer, and refrain from acting on behalf of the department at this initial stage of investigation until officer and departmental interests are deemed to be consistent with each other. The attorney should assist the officer in drafting a formal statement as to the underlying facts and the reasonableness as perceived by the

officer justifying his or her use of deadly force. The statement shall be drafted to insure (if that be appropriate) that legal sufficiency for such use of force is included in the officer's statement. The officer will also be advised of his legal and departmental rights regarding statements. The attorney will continue to assist the officer during the post-shooting investigations as well as criminal, civil, and federal civil rights actions, including the initial interview conducted by federal agents in a criminal civil rights action. Should this initial lawyer-client interview indicate that the officer has not acted lawfully, in good faith, or within the scope of his or her duties, the attorney assigned by the department will advise the officer that all future legal representation on his behalf will have to be financed personally by the officer. However, all communications between the officer and department-furnished legal counsel are privileged and will remain confidential and undisclosed. Should this be the case, and in view of the severe criminal consequences involved, department-assigned counsel should advise the officer to refrain from making any further statements on the matter save those for strictly departmental, internal purposes. Whenever departmental legal counsel is required to withdraw from providing legal assistance to the department because of this prior involvement and relationship with the officer, a request to the state, county, or local legal entity providing such services to the department by statute should be made to seek the assignment of another publicly employed attorney to assist in whatever departmental or criminal action is deemed appropriate. This can be done on a case-by-case basis to insure propriety at all time and avoid any unnecessary conflict of interest for legal counsel, as well as provide necessary legal service to the departmental command personnel.[18]

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[18]Assistance in preparing this section on legal services as well as in drafting this recommended policy guideline was provided by Joseph E. Scuro, Jr., Assistant Attorney General, Legal Counsel, Ohio State Highway Patrol, Columbus, Ohio.

Psychological Services Provided Officers

An officer who has just been involved in a shooting incident undergoes substantial soul-searching. He will examine his own personal conduct as set by an external code or standard, i.e., the community, the police fraternity, family, friends, neighbors, and religion. Likewise, he will examine his own private code of justice and fairness in light of the situation, past experience, and value placed on human life. The examination of moral and ethical conscience may be a healthy experience if properly controlled. There are, on the other hand, many examples of officers mentally crumbling under the strain of mental soul-searching as an aftermath of a shooting. Psychologists[19] who work with police officers indicate that almost all officers who become involved in fatal use of force incidents have similar reactions. Many officers have been awarded "stress disability" retirements based on a finding of being emotionally unfit for continued police work following the trauma of a shooting incident.[20]

Some departments allow for religious or psychological counseling to officers following a shooting incident. Where these services are provided, the results appear positive; the problem being that such services are generally optional to the officer. In the case of providing chaplain services, the option may be more valid due to individual religious beliefs. But, regarding professional psychological help, the option may not be in the best interests of the officer. Many officers with a macho attitude or by virtue of peer pressure will opt not to take advantage of the service. Such a decision is detrimental to the officer.

The family of the involved officer is faced with similar moral and ethical strains following a shooting encounter. More times than not, the family is completely forgotten, not only by the department but also by the officer himself. This isolation is psychologically unhealthy to all concerned. It is imperative that mental isolation be overcome. The psychologist and clergy can assist by providing professional services to both the officer and his family. These professional services should extend to placing the officer and his family in contact with other families who have undergone similar situations.

Recommended Guideline

In all cases where any person has been injured or killed as a result of firearm discharge by a police officer, the involved officer will be required to undergo a debriefing with the department psychologist as soon as possible, but within 24 hours of the incident. The purpose of this debriefing will be to allow the officer

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[19]John Stratton, Ph.D., A presentation in a use of deadly force training program (December 1981).

[20]The Washington Post, April 1980.

to express his feelings and to deal with the moral, ethical, and/or psychological after-effects of the incident. The debriefing shall not be related to any department investigation of the incident and nothing discussed in the debriefing will be reported to the department. The debriefing session will remain protected by the privileged physician-patient relationship.

In all cases where any person has been injured or killed as a result of a firearm discharge by a police officer, the involved officer and his family will have <u>available</u> to them the services of the department chaplain. The purpose of this offer is to provide the officer and/or his family with a source of professional consultation to aid them in dealing with the potential moral and ethical after-effects of a shooting incident. The chaplain services shall not be related to any department investigation of the incident and nothing discussed will be divulged to the department. The consultation sessions will remain protected by the privileged relationship.

Administrative Leave

When an officer is involved in a shooting incident, he generally needs time to collect himself. He should meet with a psychologist and an attorney, and many may feel a need to confer with a member of the clergy. The department and the officer are usually subjected to community and media pressures. These pressures and the need to have time to confer and reflect on the incident mean that the department is under some obligation to temporarily relieve the officer from the rigors of police duties. Unfortunately, many departments have failed to recognize this very serious need. Some have recognized the need but have stigmatized the officer by placing him on "suspension." The term suspension in the police tradition has usually been associated with negative discipline. Therefore, when an officer is "suspended pending an investigation," the media, the public, and officers regard this as a disciplinary reaction to the shooting incident. In the event the officer is exonerated of all liability and returned to full duty, the original "suspension," however, remains ingrained in the public eye, and like a newspaper retraction, no one will read or understand any rationale explaining the final disposition. To overcome this stigma, and yet provide the officer witha few days of paid time off, it is strongly recommended that the department use "administrative leave." Secondly, when the officer is psychologically prepared to return to work, the agency may consider a more lengthy period of "light" or "administrative" duty where the officer is provided with an opportunity to continue doing real police work but off the street for a short while.

Recommended Guideline

Any officer directly involved in a deadly force incident shall be placed on "administrative leave" directly upon completion of his preliminary report of the incident. This leave shall be without loss of pay or benefits, pending the results of the investigation. The assignment to administrative leave shall not be interpreted to imply or indicate that the officer has acted improperly.

While on administrative leave, the officer shall remain available at all times for official departmental interviews and statements regarding the shooting incident, and shall be subject to recall to duty at any time. The officer shall not discuss the incident with anyone except the state's attorney, departmental personnel assigned to the investigation, the officer's private attorney, the officer's psychologist, the officer's chosen clergy, and the officer's immediate family.

Upon returning to duty, the officer may be assigned to "administrative duty" for a period of time as deemed appropriate by the officer, his psychologist, and the chief of police.

The Post-Shooting Investigative Process

The integrity of the police is never so critiqued as during and following the investigation of an officer-involved shooting. Commissions have been formed as oversight committees in an effort to determine a best way to investigate such incidents. Prosecutors have been accused of investigative negligence stemming from their everyday close relationship to the police and, therefore, their inability to be unbiased. Federal and local community relations groups have accused the police of coverups. Civilian review boards have been suggested as the panacea investigative process. Such boards have developed and later faltered under the weight of their own inability to professionally investigate complicated, stress-ladened, shooting scenarios. The end result seems to be a quality criminal investigation by the best available source—the most sophisticated homicide investigation unit with jurisdictional authority. The second part of the process lies outside the control of the police, that is, the judicial process. It is here that a more complete analysis of the process is required.

The investigative versus the prosecutorial process was vividly highlighted in the McDuffie case. In this case, the same criminal justice system (prosecutors, judges, courts-juries) that the police maintain frustrates their efforts to control crime is the system that worked to the advantage of police officer/defendants. In brief, four police officers were (1) dismissed from the department, (2) criminally charged with homicide as a direct result of a departmental investigation, (3) indicted by a Grand Jury, and (4) found not guilty by a trial jury.

The point here is that the post-shooting investigative process by the police department concerning its own members was handled in a competent professional manner, yet the ultimate outcome was frustrating to both the police and the community. Unfortunately, in this report we shall deal only with making the police process more effective and only hope that other criminal justice components will do likewise.

It is difficult, if not impossible, to determine or even suggest a relationship between the post-shooting investigative process and the justifiable homicide rate. Based on experience alone, the author feels that high rates may be the cause of administrative controls rather than administrative controls resulting in lower rates. Suggested guidelines are therefore based on our practical experience and the total experience gained from this project.

Recommended Guideline

The following procedures will be used to investigate every incident of firearms discharge by a department member except for target practice, hunting, ballistic examinations, and incidents involving the destroying of an animal.

INVOLVED OFFICER

Whenever a member discharges his firearm either accidentally or officially, he shall immediately

- *Determine the physical condition of any injured person and render first aid when appropriate*
- *Request necessary emergency medical aid*
- *Notify the telecommunications operator of the incident and location*

The officer will remain at the scene (unless himself injured) until the arrival of the appropriate investigators. However, if the circumstances are such that the continued presence of the officer at the scene might cause a more hazardous situation to develop (violent crowd), the ranking commanding officer at the scene shall have the discretion to instruct the officer to respond to another, more appropriate location.

The officer will protect his weapon for examination and submit said weapon to the appropriate investigator.

The officer shall prepare a detailed report of the incident.

The officer should not discuss the case with anyone except (1) supervisory and assigned investigative personnel, (2) the assigned District Attorney, (3) the officer's attorney, psychologist, clergy or immediate family.

The officer shall be available at all times for official interviews and statements regarding the case and shall be subject to recall to duty at any time.

TELECOMMUNICATIONS

The notified telecommunications person shall

- *Dispatch requested medical aid*
- *Notify the on-duty uniformed patrol commander*
- *Notify the officer's designated attorney*[21] *in the case of injury*
- *Notify the chief of police in the case of injury*
- *Notify the District Attorney in the case of injury*
- *Notify the designated firearms incident investigative unit(s)*

UNIFORMED PATROL COMMANDER

The uniformed patrol commander shall:

- *Proceed immediately to the scene*
- *Secure the scene*
- *Conduct a preliminary field investigation*
- *Render command assistance to the assigned investigator(s)*
- *Assist the involved officer(s)*
- *Submit a detailed written report of the results of the investigation to (1) the chief of police, (2) the assigned investigator(s), and (3) the board of firearm review*

In the case of a homicide, the officer shall be placed on administrative leave, without loss of pay or benefits, pending the results of the investigation.

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[21]See other sections of this report which discuss the advisability of providing legal, psychological, and religious services for the officer and his family.

CRIMINAL INVESTIGATION UNIT

The assigned criminal investigation unit will conduct a thorough investigation of every shooting incident which results in injury or death. A detailed report will be submitted to (1) the chief of police, (2) the District Attorney, and (3) the board of firearms review.

INTERNAL AFFAIRS UNIT

The internal affairs unit will conduct an investigation (subordinate to any criminal investigation) to determine:

- *Whether the shooting was*
  - *within policy*
  - *out of policy*
  - *accidental*

- *Evaluate training considerations*
  - *drawing and exhibiting firearms*
  - *firing of weapon*
  - *tactics prior to drawing and discharging*
  - *tactics during and following discharge*

- *The quality of supervision prior to, during, and after the shooting incident*

The internal affairs unit will prepare a detailed report of findings for (1) the chief of police and (2) the Use of Deadly Force Review Board.

USE OF DEADLY FORCE REVIEW BOARD

The Use of Deadly Force Review Board shall convene and review circumstances attendant to each discharge of a firearm by a department member.

The board shall consist of:

- *An assistant chief (board chairman)*
- *The commanding officer of the patrol unit*
- *The commanding officer of the training unit*
- *The command officer of the officer who discharged his weapon*
- *Two members of the same ranks as the member who discharged his weapon*
- *One at-large community representative selected by _____ (local option) with the consent of the chief of police*[22]

The Use of Deadly Force Review Board will evaluate, in explicit and fact-finding fashion, each aspect of an officer-involved shooting. Such evaluation will include:

- *A thorough review of the criminal investigation report*
- *A thorough review of the internal affairs report*
- *Hearing of direct testimony, if necessary, from officers and witnesses*

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[22]The composition and size of the board may vary depending on the size of the agency.

The Use of Deadly Force Review Board will develop findings and make recommendations to the chief of police in the following areas:

- *Whether the shooting was within policy, out of policy, or accidental*
- *Tactical considerations*
- *Training considerations*
- *Quality of supervision*
- *Discipline considerations*
- *The post-shooting investigative processes and quality.*

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